App. F. IX-4

Previous References 1938. (Legis.)

File No. 38-38

Serial Nos. 1-5

Letter References
Legis 1843-1

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Have only

Part B for May 1939.

SUBJECT.

Resolution by the Mysore State Muslim League suggesting the introduction of legislation on the lines that prevailing in British India in regard to divorce etc., under the Muhammadan Law.

Vazeerhussain
8/7/39.

Resolutions by the Mysore State Muslim League

General and Revenue Secretariat

File No. 905/M 4697 of 193 [App. F. III—2

Serial No.

From The General Secretary
The All Mysore State Muslim League, Bangalore City
Letter no 828 d 24th Dec. 38 forwarding copies of resolutions passed by the League in Karkambelli.

1) There are 2 Resolutions, attached to the P.W.D. Resolution 3 refers to Wakf properties managed by Govt and it states that it may be handed over to a Central organisation. Perhaps it is a question to be dealt with in the Muzrai Branch.

2) Resolution 4 refers to the present System of Anglo Muhammadan Law in vogue in Mysore and urges the Govt to introduce legislation and bring the law in accordance with the one prevailing in Br. India. This will be passed on to Legis Section for necessary action. Submitted for orders

yes by 3.2

3) The Muzrai Dept Govt Minute calling Association's useful comments & return of file

4) Resolution No 3 is taken and the file is returned to the Resolution Br.

(M Orders Br.)

Resolution of Mysore State Muslim League

File No of 193

General and Revenue Secretariat

OFFICE OF THE FINANCIAL SECRETARY
MAR 9 1939
No. 714-5

The Resolution states that the present state of Anglo Mahomedan law is unsatisfactory and legislation may be undertaken on the lines of Acts in British India. Cases involving the decision of questions of personal law in regard to Mahomedans seem to be few and far between. The changes made by legislation in British India in regard to the various departments will however be looked up if considered necessary.

Re 3.39

b) The legislation urged is in respect of (1) divorce (2) khula (3) Muslim Wakfs. The league request that the law in Mysore may be brought into a line with that in force in British India. If so desired the Hon'ble Members may be requested to furnish opinion of each of the kind suggested is called for. Subsequent orders.

c) At present no such legislation is felt to be necessary. The existing Mahomedan law is made applicable to such cases. If any member of the L.C. Council brings a private bill and if the Govt are satisfied with it it can be passed thro' in the Council. The High Court may if necessary be consulted.

Chief Secy.

1st member

8/3/39

10/3/39

13/3

CHIEF SECRETARY
8. MAR. 1939
GOVT. OF MYSORE

Resolution of the Mysore State Muslim League

File No. of 193 [App. F. III—2

General and Revenue Secretariat 9 MAY 1939 8256

Serial No.

MAY 6 1939 8260

CHIEF SECRETARY. * 14. MAR. 1939 * GOVT. OF MYSORE.

10) and to the General Secretary, Muslim League
draft letters to the High Court are submitted for orders.

One 14.3.39 Dom

11) Copy I for approval
Chief Secy)

Hy 16-3.

12) Dms 15/3

13) Above Hy 15-3

Issued P 4952 dated 17.3.39 to Registrar. High Court
Issued P 4953 " " to Secy of the Muslim League

Form

The Registrar High Court

D. Dis no 260/38-39 dated 21st April 1939

forwards the opinion of the Judges in regard to the necessity for legislation

14) Mr. Justice Ghani is of opinion that legislation in regard to dissolution of marriage may be passed with advantage. All the Judges are however of opinion that legislation should be undertaken only if it is supported by a very predominant majority of the Muslims in the State.

15) Such an support There does not appear to be any such pressure from the majority of the Muslims for a change in the law.

Submitted for orders.

16) No further action appears necessary at present. This may be recorded

One 27-4-39. 4.5.39 from

19 new 8/5/39 Chief Secy / for Members & Dewan

17) Hy 5-5-39

9-5-39 Hy

From the Registrar High Court
D. Dis 260/38-39 dated 2-5-39.
returning the original
Letter from the General Secretary
All Mysore State Muslim League.

Hy 16-3-39
Now record

B

CHIEF SECRETARY. * 5. MAY 1939 * GOVT. OF MYSORE.

NOTE—(Journal Sheet.

WD 0544—GPB—30,000—2-9-38

When a resolution of the All Mysore State Muslim League urging legislation in regard to Mahomedan Law in general on the lines of British Indian enactments, was sent to the High Court for opinion, all the Judges of the High Court were of opinion that no such legislation should be undertaken unless it was supported by a very predominent majority of those concerned.

Mr. Justice Abdul Ghani has added that the right to tie up property for the benefit of descendants of the wakif should not be given here as in British India but that an Act on the lines of the British Indian 1923 Act for controlling the administration of wakif property may be considered.

His Note is as follows.-

" Personally, I am not quite in favour of ~~Wakkfx~~ Wakf-alul-awlad (i.e.) tying up property mainly, if not solely, for the benefit of the descendents of the Wakif, though in British India by the Act of 1913 ~~ssch~~ Wakfs are validated. A class of lazy people who have no incentive to work and earn will be the result and this is against Muslim principles. What was intend ed for the benefit of the poor, or for religious or charitable purposes, may not be misused to provide for the family and descendents, without any regard to the rule against perpetuities. If public opinion is however in favour, legislation may be undertaken. It is certainly necessary

to bring the administration of Wakf property under control, as in the majority of cases, gross mismanegement is the rule. A provision like the Religious and Charitable Endowments Act does not appear to be quite enough. An Act on the lines of the Act of 1923 and incorporating what is good in the Provincial Acts referred to above, is desirable.

Of course, it is only the majority of the Muslims in the State press for a change in the existing system, that legislation is called for."

4697/P (1

Legis 38-38-1

THE ALL MYSORE STATE MUSLIM LEAGUE

OFFICE: 211, AVENUE ROAD,

No 828

Bangalore City, 24th December 19 38

Jany

CHIEF SECRETARY * 24. JAN. 1939 * GOVT. OF MYSORE.

The Chief Secretary
to the Government of
H.H. the Maharaja of Mysore,
Bangalore.

Sir,

Herein enclosed you will kindly find a copy of the resolution adopted in the Session of the League held in Kankanhally on 4th December 1938. I request that the same may kindly be placed before the benign Government for needful action being taken in the matter.

I beg to remain
Sir,
Your most obedient servant,

N. J. Khaleel
General Secretary.

THE ALL MYSORE STATE MUSLIM LEAGUE

OFFICE: 211, AVENUE ROAD,

Bangalore City, 24-12-38. 19

Copy of the resolution adopted in the Session of the League held in Kankanhally on 4th December 1938.

X X X

RESOLUTION. NO. 4.

THAT THE PRESENT SYSTEM OF ANGLO MUHAMMADAN LAW IN VOGUE AS FAR AS DIVORCE, KHULA, MUSLIM WAKFS AND WAKFALLUL AVALAD IS CONCERNED IS HIGHLY UNSATISFACTORY AND URGES THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE TO INTRODUCE LEGISLATION AND BRING THE LAW IN ACCORDANCE TO THAT PREVAILING IN BRITISH INDIA.

X X X X X

A. J. Khaleel
General Secretary.

3

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 17th March 1939.

No. P 4952/Genl 2
Legn 38-38-2

From

The *Chief Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Registrar,
The High Court of Mysore,
Bangalore.

Sir,

I am directed to forward a letter* No.828 dated 24th December 1938 received from the General Secretary, The All Mysore State Muslim League, Bangalore enclosing a copy of the resolution adopted in the Session of the League held on the 4th December 1938 and to request that the opinion of the Judges of the High Court as regards the suggestion to introduce legislation on the lines ~~introduc~~ indicated therein may kindly be obtained and sent to this office.

*To be kindly returned with the reply.

I have the honour to be,
Sir,
Your most obedient servant,

17.3

for Chief Secretary to Government.

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 17/3/39

Signed by Mr. A.S.R.

*. to be kindly returned with the reply.

List of enclosures.....

Copied by .....

Examined by.....

Section

File No.

Serial No.

No. P495-2/Genl

To The Registrar

The High Court of Mysore

Bangalore

Sir,

I am directed to forward letter no 828 dated 24th December 1938 received from the General Secretary, the All Mysore State Muslim League Bangalore enclosing a copy of the resolution adopted in the Session of the League held on the 4th December 1938 and to request that the opinion of the Judges of the High Court as regards the suggestions to introduce legislation on the lines indicated therein may kindly be obtained and sent to this office.

I have etc

Chief Secretary to Govt

WD 0278—GPB—30,000—4-3-38

14/3

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 17th March 193 9

No. P 4958
Legi. 38-38-3

From

Chief Secretary to the Government of His Highness the Maharaja of Mysore.

To

The General Secretary,
The All Mysore State Muslim League,
211 Avenue Road, Bangalore City.

Sir,

I am directed to acknowledge receipt of your letter No.828 dated 24th December 1938 forwarding a copy of the resolution adopted in the Session of the League on the 4th December 1938.

I have the honour to be,

Sir,

Your most obedient servant,

17.3

for Chief Secretary to Government.

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 17.3.39

Signed by Mr. A.S.R

List of enclosures.....

Copied by .....

Examined by.....

Section

File No.

Serial No.

No. P 4953

To The General Secretary

The All Mysore State Muslim League

211 Avenue Road, Bangalore City

Sir,

I am directed to acknowledge receipt of your letter no 828 dated 24th December 1938 and forwarding a copy of the Resolution adopted in the Session of the League on the 4th December 1938, ~~and to state that the matter will receive the consideration of Government.~~

I have etc

for Chief Secretary to Govt.

H. Admin. (F) No. 5.

R.O.C. No. 26738-38
Dis.

Encl one.

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,
Bangalore, 18th April 1939.

Legis 38-38-L4 21

6581 of 38
P

FROM

T. SHAMIENGAR, Esq., B.A., B.L.,
Registrar, High Court of Mysore.

CHIEF SECRETARY. 21. APR. 1939 GOVT. OF MYSORE.

Rajasevaprasakta Esq
B. T. Kesaviengar, B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

SIR,

With reference to your letter No.P.4952, dated 17th March 1939, forwarding letter No.828, dated 24th December 1938, of the General Secretary, The All Mysore State Muslim League, Bangalore, enclosing a copy of the resolution adopted in the Session of the League held on 4th December 1938 suggesting the introduction of legislation on the lines of that prevailing in British India in regard to Divorce, etc., under the Muhammadan Law, and requesting the opinion of the Judges of the High Court in the matter, I am directed to enclose copies of the Minutes made by the Judges on the subject.

I have the honour to be,

Sir,

Your most obedient servant,

T. Shamiengar

Registrar.

nl

MINUTES MADE BY THE JUDGES.

6th April 1939. THE CHIEF JUSTICE :--

I do not feel competent to express an opinion on the question what new legislation should be undertaken in regard to such matters except that it appears to me that no such legislation should be undertaken unless it is supported by a very predominant majority of those concerned.

3rd April 1939. MR. JUSTICE C. ABDUL GHANI:--

Amongst Muslims, marriage is a civil contract, with option generally open to both parties, for divorce; but the husband's right in this respect is much greater than the wife's. A man can, of his own accord, dissolve the marriage tie, even against the will of his wife, if it suits his whim or caprice without assigning any reason, while a woman cannot, unless she has this power by a contract with her husband whether anti-nuptial or post-nuptial. The husband need not have recourse to a Court of law before divorcing his wife; whereas a wife, except in the case of the contract already referred to, and except when she becomes an apostate, will have to go to Court and even there her rights are limited to cases where the husband is suffering from congenital impotence unknown to the wife at marriage and where the husband falsely charges her with adultery. There is also the rare case of li'an. Even in cases of cruelty and

lesertion, except in Calcutta, the wife was not entitled to a judicial divorce. The various modes in which marriage may be dissolved at the instance of the wife are as follows:--

1. By stipulation in the marriage contract.
2. By option derived from the husband -- teefwiz.
3. By Khula -- i.e. redemption or purchase.
4. By Mubarat - (i.e.) mutual agreement.
5. By Li'an -- (i.e.) imprecation.
6. By Ila -- (i.e.) Vow of continence.
7. By Zihar -- (i.e.) Injurious assimilation.
8. By judicial divorce on certain limited pleas.
9. By apostacy.

No.1 is rare. 2 to 7 depend on the husband and unless he agrees or his consent is purchased, or he behaves in a particular manner (for No.5, 6 and 7), the wife is helpless. Her right of suit for a divorce is also limited to two or three kinds of cases and what is more to the point, the procedure to be followed and the Courts in which the application or suit is to be filed are matters of doubt and difference of opinion. The result has been that a harassed woman has often resorted to the last, viz. , apostacy. It is seen that, in a matter of contract, the parties to it have not the same or fairly equal rights. The disadvantages to Muslim women are manifold, and with the advance of civilisation and learning, and the awakening amongst the women, there has been agitation for some years past for a change and for legislation to improve the lot of women in this respect. Shairat Act was enacted in British India and very recently the Dissolution of Muslims Marriage Act. With certain

modifications, the provisions of those Acts may, perhaps, be introduced in Mysore with advantage. Without entirely breaking the existing system of Divorce, the following reforms would go to remove in a great measure the existing inequalities:--

(1) Imposing restrictions on the power of the husband and permitting "talaq" only in necessary cases, such as those mentioned by Raddul Mubbar, Volume II, page 683.

(2) Recognizing the right of women to obtain separation on reasonable grounds.

and (3) Making intervention of a Judge necessary for a divorce.

Though women belonging to the Shia and Shafai sects have certain advantages over women of the other sects, in the matter of divorce, yet even they are subject to the general disadvantages and inequalities. I am inclined to think that a change is called for.

As regards "Waqfs" also, agitation has been going on in British India for several years and by the Waqf Validating Act of 1913, the Wakf Act of 1923, certain radical changes in the existing law and a control over the administration of Wakfs were obtained. In addition different provinces have their own Wakf Acts, such as Bengal Act XIII of 1934, Bombay Act XLII of 1923 as amended by the Amendment Act XVIII of 1935, The United Provinces Wakf's Act XIII of 1936, to suit the needs of each locality and generally to have control over the ~~proposed~~ proper administration of Wakf property.

Personally, I am not quite in favour of Wakf-alul awlad, (i.e.) tying up property mainly, if not solely, for the benefit of the descendants of the Wakif, though in British India by the Act of 1913, such Wakfs are validated. A class of lazy people who have no incentiv to work and earn will be the result and this is against Muslim principles. What was intended for the benefit o the poor, or for religious or charitable purposes, may not be misused to provide for the family and descendants without any regard to the rule against perpetuities. If public opinion is, however, in favour, legislation may be undertaken. It is certainly necessary to bring the administration of Wakf property under control, as ir the majority of cases, gross mismanagement is the rule. A provision like the Religious and Charitable Endowments Act does not appear to be quite enough. An Act on the lines of the Act of 1923 and incorporating what is good in the Provincial Acts referred to above, is desirable.

9th April 1939. Of course, it is only if the majority of the Muslims in the State press for a change in the existing system, that legislation is called for.

MR. JUSTICE T. SINGARAVELU MUDALIAR:--

18th April 1939. I agree that legislation may be undertaken if the majority of the community agree to it.

****

"Copy."

J. Saravelu

Registrar.

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H. Admin. (F) No. 5.

~~R.O.C.~~ No. D1. Dis. 260/38-39

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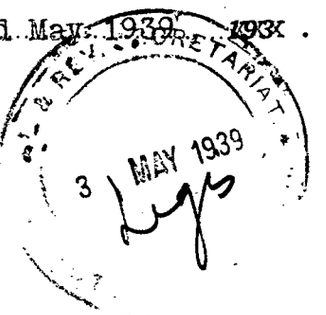
Enc

Legis 38-38-5

HIGH COURT OF MYSORE,

Public Office Buildings, Cubbon Park,

Bangalore, 2nd May 1939.



FROM

T. SHAMIENGAR, Esq., B.A., B.L.,
Registrar, High Court of Mysore.

To

Rajasevaprasakta
B.T. Kesavaiengar, Esq.,B.A.,
Chief Secretary to the Government of His
Highness the Maharaja of Mysore,
B a n g a l o r e.

Sir,

In continuation of my letter No.D1.Dis. 260/38-39 dated 21-4-1939, I am directed to return herewith the original letter No. 828 dated 24-12-1938 from the General Secretary, the All Mysore State Muslim League, Bangalore to the Chief Secretary to Government, received with your letter No. P. 4952, dated 17th March 1939.

I have the honour to be,

S i r,

Your most obedient servant,

T. Shamiengar

Registrar.

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